

Supreme Court, U. S.

FILED

SEP 5 1978

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT of the UNITED STATES

October Term, 1978

No. 78-381

Clarence H Holding

Appellant

vs

BVA Credit Corporation

Appellee

JURISDICTIONAL STATEMENT

Clarence H Holding

1901 Woodbine Road

Richmond, Virginia

23225

Counsel for self pro se

Appellant

IN THE
SUPREME COURT of the UNITED STATES

October Term, 1978

No. -----

Clarence H Holding Appellant

VS

BVA Credit Corporation Appellee

JURISDICTIONAL STATEMENT

To the Honorable Chief Justice and to
the Associate Judges of the Supreme
of the United States :

May it please the Court ,

The Appellant brings this appeal from
the decision and judgment of the Supreme
Court of Virginia entered in this mat-
ter below. As well the decisions arising
from the Circuit Court of the City

Of Richmond Div. I. The judgment appealed from denied the Appellant the relief requested, i.e. the Appellant's rights were violated guaranteed by the Sixth and Fourteenth Amendments of Due Process of the United States Constitution . The Supreme Court of Virginia refused to hear the case on its merits and denied to grant a rehearing .

Opinions Below

Opinions below are attached.

Jurisdiction

The judgment of the Supreme Court of Virginia was entered on April 11, 1978. A motion for rehearing en banc was denied June 9, 1978. This Court's jurisdiction is invoked under the Constitution of the United States the Sixth and Fourteenth Amendments- Compulsory and Due Process.

Questions Presented

1. Whether the failure of the Circuit Jud

ge to consider the failure of the Deputy Clerk Gerald M Greshams to give service on subpoenas of the Appellant violate the Appellant,s rights to compulsory process guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States .

2. Whether the collusion of the substitute Trustedd David M Shaw and BVA Credit Corporation and its four officers who defrauded the Appellant of his property without the knowledge or presence of the Appellant at the Trustee sale to the debtor creditor Appellee BVA Credit Corporation for a grossly inadequate give away price so as to shock the Courts conscience and by their unconscionable acts violated the Appellant,s rights guaranteed by the Sixth and Fourteenth Amendments Due Process of the Constitution of the United States.

3. Whether the substitute Trustee David M Shaw violated his obligations and duty to

his Cestui Que Trust when at the Trustee sale finding no other bidders except the debtor creditor or sham bidders present adjourn the sale at the appointed time. Not doing so caused great sacrifice of property and injury to the Appellant thus violated the Appellant's rights of Due Process guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States.

4. Whether the unconscionable acts of the substitute Trustee , EVA Credit Corporation and four of its officers who in collusion defrauded the Appellant Cestui Que Trust of his property and caused great injury and sacrifice of property also causing Appellant to have a heart attack resulting in open heart surgery with three bypasses and violated the rights(his) guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States-Due Process. Should be

and ask for compensation for the injuries, damages , and sacrifices sustained which are permanent and lasting.

Constitutional Provisions Involved

Amendment VI

... to have compulsory process for obtaining witnesses in his favor..

Amendment XIV

... Nor shall any state deprive any person of life, liberty, or property without due process...

Statement of the Case

The substitute Trustee on a second mortgage deed of trust , BVA Credit Corporation , and four of its officers of the debtor creditor did knowingly and intentionally in collusion by their unconscionable acts defrauded the Appellant of his property in Ashland , Va. located at corner of Maple and Robinson Sts. comprising $\frac{1}{2}$ block in business section adjacent the post office . December 23, 1975

substitute Trustee David M Shaw purported to have sold the Appellant's office property at the Hanover Court House two days before Inas to the debtor creditor Appellee BVA Credit Corporation for a ridiculous unheard of shocking grossly inadequate price of \$12,000 . The office property was worth several times that amount . At the time of the loan in July 1973 the loan officer and assistant manager, Donald F Ridenour of Hanover Corporation now BVA Credit Corporation appraised the property then at \$55,000.00- he being a professional appraiser. The values of the properties in the area have increases a minimal of three times or more since 1973. In the vicinity only 1/2 block away the Hardie property of similar vintage sold for \$150,000.00 March 1976. Another sold for \$177,000.00 . The Appellant was not present at the sale nor his agent and knew nothing of the sale and was out of the city. The time and conditions

of the sale two days before Xmas were such that it would be utterly impossible and unreasonable to even hope to have a sale which would be equitable and fair to the Appellant. The substitute Trustee , BVA Credit Corporation, it,s four officers all acted in bad faith and in collusion knowingly and intentionally by their unconscionable acts defrauded the Appellant of his office property and caused grave great injuries permanent and lasting to the Appellant and shocks the Court,s conscience or anyone else conscience . Unjust .

The Trial Judge denied the Appellant,s motions to transfer the case to equity jurisdiction and to include the substitute Trustee and the four officers of BVA Credit Corporation in the case . The judge denied the Appellant a new trial on the grounds he was unable to get due process on subpoenas for the issuance and compliance of same for the production records material to the case and justice.

The trial judge failed to vacate the substitute Trustee sale and award the Appellant damages for his loss of property and injuries sustained . The trial judge failed to grant judgment to the Appellant for obstruction of justice committed . The trial judge failed to set aside the Trustee sale and award judgment and damages because the fiduciary relationship to the Appellant while in collusion with the debtor creditor and its officers violated the Appellant,s constitutional rights of due process ALSO THEIR failure to meet the exigencies of the situation and in collusion with BVA Credit Corporation the Trustee permitted the urgency of the debtor creditor BVA Credit Corporation to force a sale under circumstances injurious to the Appellant at and for a ridiculous grossly inadequate price to the debtor creditor when only the debtor creditor was bidding or mock sham bidders present. The unconscion

able intentional acts mentioned above caused great grave and permanent injuries and damages to the appellant.

Reasons for granting the appeal

The decisions and holdings and cases confirm and substantiates the rights of due process and the right of compulsory process and the reasons to substantiate the errors made by the trial judge and the unconscionable acts committed by BVA Credit Corporation, its four officers, in collusion with the substitute Trustee and the damages injuries suffered by the Appellant and why the Appellant should be awarded the compensatory and punitive damages asked for and for the injuries sustained by the Appellant.

Va code 3299 and 3300 sections allow statutory recoupment - relief in equity where the price obtained for the property at the Trustee sale is so grossly inadequate as to shock the conscience of the chancellor, the sale will be set aside . .

In Rohrer V Strickland 116 VA 755 A Trustee in a deed of trust is agent of both parties and bound to act impartially between them . He should bring the property to sale under every possible advantage of his Gestui Que Trust . He May adjourn the sale from time to time to meet the exigencies of the situation. If he finds no bidders except the debtor creditor or only sham bidders , he should adjourn the sale. In the case before the Court the substitute Trustee David M Shaw knew the above situation existed at the time of the sale yet he knowingly and wilfully in collusion acted in bad faith with the Appellee BVA Credit Corporation and its four officers went on with the sale and sold the Appellant, s office property to Debtor creditor BVA Credit Corporation for a grossly inadequate price and defrauded the Appellant of his valuable property and caused a great sacrifice and great damages and injuries to

the Appellant which are permanent and lasting.

In *Rosset v Fisher*, 11 Gratt(52VA) 492, Moncure J. in delivering the opinion of the Court pp. 498-499, observes : A Trustee in a Deed of Trust is agent of both parties and bound to act impartially between them; nor ought he to permit the urgency of the creditors to force a sale under circumstances injurious to the debtor at an inadequate price, 1 Lon Dig 323 ; *Quarles v Lacy & Mumf* (18 VA) 251. He is bound to bring the estate to the hammer, ' as has been said by Lord Eldon, ' under every possible advantage to his *Cestui Que Trust*; ' and he should use all reasonable diligence to obtain the best price . Hill on Trustees, 479 Marg, and cases cited. " *Wilson v Wall*, 99 VA 353, 38 SE 181. In *Minor on real estate*, see 497, it is said the Trustee must exercise " in all things, in respect to the *Cestui Que Trust*, the most transparent good faith. " See

authorities N 1 , Laso see 665. In the case before the Court the substitute Trustee, BVA Credit Corporation , and four officers acted in bad faith , violated the fiduciary duty and responsibility to the Appellant and in collusion sold the Appellant's property for a grossly inadequate price so inadequate as to the amount of money owed to BVA Credit Corporation which was \$23,000.00 for only \$ 12,000 and grossly inadequate as to the value of the property to the debtor Crediter BVA Credit Corporation and in collusion defrauded the Appellant of his Valuable office property and caused permanent lasting injuries to the Appellant. It is likewise settled that a Trustee in a Deed of Trust in exercise of reasonable discretion , may adjourn the sale from time to time to meet the exigencies of the situation, Jones on Mortgages , see 1873 , citing Dexter V Shepherd , 117 Mass 480; Hosmer V Sargent, 8

Allen (Mass) 97 , 85 AM Dec, 863.

Trustee's sale " will be vitiated by any fraud against the rights of the debtor or any collusion between interested parties of a nature to cause a sacrifice or depreciation of the debtors property. It is the duty of the Mortgagee or Trustee to use every reasonable care and exertion to make the property bring the highest price obtainable " IREM 1477. If a Trustee finds there is no bidder present except the Creditor, or only sham bidders , he should adjourn the sale , " Fairfax V Hopkins, 8 Fed Cas No 4614 , " Cranoh CC 134; Meyer V Jefferson Ins Co., 5 KA App 245 ; Vail V Jacobs , 62 Mo 130, 133 ; Johnston V Eason , 3 Ired Eq 330,336; Briggs V Briggs 135 Mass 396. The case before the Court the substitute Trustee , BVA Credit Corporation, and four of its officers in collusion sold the valuable office property of the Appellant to the debtor creditor BVA Credit Corporation for a price so

grossly inadequate thus defrauded the Appellant of his valuable office property and caused him to suffer great injuries. The books are abound with illustrations of the principle that Courts of Equity will seize upon the fact of accident and surprise, coupled with gross inadequacy of price, as justification for granting relief. APPLICABLE IN THE CASE BEFORE THE COURT and the Appellant ask for help.

In Linney V Heymoyle 145 VA 589 here the property worth \$3,500 was sold for \$1100. Sale took place 18 days after expiration of advertisement and sold to the administrator of the creditor. Trial Court held the sale voidable in a Court of Equity. Affirmed by the Supreme Court of Virginia. The action was prejudicial and amounted to an injustice to the debtor.

When a Trustee is faced with the question as to what is his duty in regard to an adjournment of a sale, the criterion is not

that there is no bidder present except the creditor or mock sham bidders , but the criterion is or should be that a bid so grossly inadequate which if accepted , it would amount to a sacrifice of the debtors property and to his injury. The substitute Trustee in the case before the Court knowingly and intentionally acted in bad faith and in collusion with BVA Credit Corporation and its four officers sold the Appellant ,s valuable office property to the debtor creditor BVA Credit Corporation for a grossly ridiculous inadequate price thus defrauded the Appellant of his valuable office property and caused grave permanent injuries and losses to the Appellant .

In Rohrer V Strickland 116 VA 755 759 ,82 SE 712 Supra Judge Whittle quotes Jones on Mortgages Sec 1873 as follows: " If a Trustee finds that there is no bidders present except the creditor or sham bidders , He should adjourn the sale. In support Fairfax

V Hopkins 8 Feb Cas 4614, 2 Cranch CC
134, Meyer V Jefferson Ins Co 5 Mo App
245, Vail V Jacobs 62 Mo 130 , Johnson
V Eason 31 Red Eq 330, 336 ; Briggs V
Briggs 135 Mass 396 . Also p 759 quotes
Whittle ... "moreover that going on with
the sale at the appointed time will re
sult in great sacrifice of property, it
is the Trustee,s positive duty to adjourn
the sale " 27 CYC 1475 .

CONCLUSION

The record speaks clearly that the Appell
ant,s constitutional rights have been vio
lated under the Constitution of the United
States the Sixth Amendment ... to have
compulsory process for obtaining witnesses
in his favor... and the Fourteenth Amend
ment ... nor shall any state deprive any
person of life , liberty , or property
without due process of law . The Appellant
,s valuable office property has been taken
by the substitute Trustee , EVA Credit
Corporation, and four of its officers in

collusion have defrauded the Appellant of his valuable office property and caused and inflicted great grave permanent injury and suffering to the Appellant .

Due process of law now posses three faces
1. Incorporated due process 2. Shocked con science and fundamental- fairness due process 3. Interference with a newly emanated - constitutional right due process. The facts and record before the Court clearly indicates , proves , and reveals the Appellant has been wronged and his constitutional rights as guaranteed by the United States Constitution have been violated under the Sixth and Fourteenth Amendments thereto as stated above . This Court is asked for relief and compensation for the wrongs, injuries , and damages to the Appellant and violation of his constitutional rights under the Constitution of the United States as stated above .

Respectfully submitted

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Clarence H holding
/s/ By Clarence H Holding

Counsel for self pro se

Appellant

Certificate of service

I certify I have sent postage paid a copy
of the above appeal to counsel for the
appellee Benjamin C Ackerly Esq 707 E Main
St P O Box 1535 Richmond , Va . 23212
on September 5 , 1978 .

Clarence H Holding
/s/ By Clarence H Holding

Counsel for self pro se

Appellant

Filed September 5 , 1978 in Supreme Court
of United States

Notice of Appeal

Supreme Court of Virginia

**Clarence H Holding , Appellant , Vs BVA
Credit Corporation , Appellee No. 770528**

**Notice of Appeal To The Supreme
Court of the United States**

**Your Appellant Clarence H Holding,
By counsel for self pro se doth hereby
give NOTICE of Appeal from this Honorable
Court of it,s decision dated April 11 th
1978 of the above styled case on grounds
of violation of the DUE Process of the
Fourteenth Amendment and the Sixth Amendment
of the Constitution of the United States
of America .**

Dated and filed May 1 , 1978:

Respectfully submitted

/s/ By Clarence H Holding

Clarence H Holding

Counsel for self pro se

Appellant

Certificate of Service

I hereby certify that I have sent post

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ago paid a copy of the above notice of Appeal to the United States Supreme Court to counsel for Appellee Benjamin J Ackerly Esq 707 E Main St P O Box 1535 Richmond , Va 23212 on 5/1/78 .

Clarence H Holding

/s/ Clarence H Holding,

Counsel for self pro se

Appellant

**Opinion of the Supreme Court of
Virginia**

**IN the Supreme Court of Virginia, in Richmond
Clarence H Holding , Appellant v. BVA Credit
Corperation No. 770528**

Filed April 11 , 1978

**From the Circuit Court of the City of Richmond,
Division I**

**Finding no reversible error in the judgment
complained of , the court refuses the
petition for appeal filed in the above
styled case .**

A Copy

Teste:

Allen L Lucy,

By/s/ Richard R Dunish

Deputy Clerk

Opinion on Petition for Rehearing

of the Supreme Court of Virginia

**In the Supreme Court of Virginia , in Richmond
Clarence H Holding, Appellant v BVA Credit
Corporation, Appellee No. 770528**

Filed June 9th , 1978

**Upon a Petition for Rehearing , on mature
Consideration of the petition of the Appellant
to set aside the judgment rendered herein on
the 11th day of April, 1978 , and grant a
rehearing thereof , the prayer of the said
petition is denied .**

A Copy ,

Teste :

/s/ Allen L Lucy

Clerk